

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 35042**

22 0031

**U.S. RAIL CORPORATION  
-LEASE AND OPERATION EXEMPTION-  
SHANNON G, A NEW JERSEY LIMITED LIABILITY COMPANY  
NOTICE OF EXEMPTION**

**PETITION FOR LEAVE TO INTERVENE  
BY THE NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION AND REPLY TO SUPPLEMENTAL  
INFORMATION**

The New Jersey Department of Environmental Protection ("NJDEP"), as the state agency charged with enforcing laws concerning air pollution, water pollution, conservation, environmental protection, and waste and refuse disposal, N.J.S.A. 13 1D-9n, respectfully requests leave to intervene in the above entitled proceeding in order to present to the Surface Transportation Board ("Board") its concerns that, contrary its submissions, US Rail Corporation ("US Rail") may be using the Notice of Exemption in order to shield US Rail (and the landowner, Shannon G) from appropriate regulation by the Board and the State of what are likely to be solid and/or hazardous waste activities

Although no Decision on the Notice of Exemption proceeding has yet been reached by the Board, to the extent that NJDEP's filing is viewed as late, NJDEP respectfully requests leave to submit a late filing. NJDEP has no objection to allowing US Rail and other interested parties an opportunity to file a response

## **FACTUAL BACKGROUND**

On June 6, 2007, US Rail submitted a Notice of Exemption to the Board. In that Notice, US Rail represented that it had entered into a lease with a non-rail carrier, Shannon G, a New Jersey limited liability company and landowner for property in Paterson, New Jersey in order to operate a "rail-served transload terminal" with "principal" commodities listed as "stone, lumber, structural steel, salt and clay." US Rail also indicated that it will move "traffic between customers on its existing Jackson Division in Ohio."

As evidenced by the deed dated July 27, 2006, Shannon G bought the subject property for \$1,250,000. See Exhibit 2 to the City of Paterson's Opposition filing. The lease agreement between US Rail and Shannon G provides that US Rail, in addition to enjoying full use of the property and the right to operate the property as a railroad, acquires numerous assets, including, as a few examples, all side tracks, turn outs, switches, connecting track, all interchange agreements and trackage agreements, and "all rights, benefits and privileges of" Shannon G. US Rail also is paid for all rail services on the property under the lease. A further "inducement" to US Rail is included. Shannon G agreed to pay US Rail an additional \$20,000 upon execution of the lease for "services" and "engineering services." US Rail, through the verified statement of John Lira in its supplemental filing, also represents that the track was "built at Shannon G's expense" and that "Shannon G will be responsible for maintaining the track." The lease further

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<sup>1</sup> The lease was provided by Shannon G as "Exhibit One" to its opposition brief dated May 25, 2007 in City of Paterson v. Shannon G, PAS-L-1799-07 (Passero, J.). See Attachment A. NJDEP notes that US Rail had indicated to NJDEP that it would only provide NJDEP with a copy of this lease agreement subject to a confidentiality agreement. On August 6, 2007, NJDEP inquired as to why such an agreement is not public information and requested a redacted version. See Attachment B.

provides that Shannon G is to build a line of railroad, but that this line shall be "constructed to the design and satisfaction of" US Rail. For all of the expense incurred or to be incurred by Shannon G, and the benefits to be realized by US Rail, Shannon G receives only \$100,000 per year. Thus, it is unclear to NJDEP based on the face of the lease what business purpose Shannon G receives by virtue of this lease.

On June 12, 2007, the New Jersey Attorney General's Office, on behalf of NJDEP, asked counsel for US Rail for additional and more specific information concerning the proposed operation in Paterson. See Attachment C. For example, NJDEP asked about plans concerning handling waste and asked for copies of any pertinent operating agreements. US Rail responded that it "does not intend at this time to handle any sort of waste traffic" (emphasis added). See Attachment D. US Rail also indicated that the only agreement concerning this property was the lease between US Rail and Shannon G.

By Decision served June 15, 2007, the Board expressed concerns as to whether the Notice of Exemption submitted by US Rail concerned a line of railroad over which the Board has jurisdiction rather than a private line as represented by US Rail. The Board accordingly ordered US Rail to submit additional information. Thereafter, on July 5, 2007, US Rail provided supplemental information wherein it stated that it "does not desire to handle garbage, construction and demolition, or waste traffic." In the Verified Statement of Gabriel Hall submitted by US Rail, Mr. Hall represented that in discussions over the potential interchange with The New York, Susquehanna and Western Railway Corporation, he discussed "the problems with waste and the legal issues being raised by the State of New Jersey."

On July 25, 2007, the City of Paterson filed an Opposition Statement with the Board.

wherein it requested that the Board reject US Rail's Notice on the basis that it contained false and misleading information. Namely, the City of Paterson contends that US Rail concealed the fact of an Eminent Domain proceeding over the subject property between the City and Shannon G. The City also argued that US Rail's representation that it would not handle waste traffic was not to be believed and submitted two verified statements indicating that the property was anticipated to be used for the loading and transfer of construction and demolition debris.

### **ARGUMENT**

#### **I. THE NOTICE OF EXEMPTION PROCEDURE IS NOT APPROPRIATE HERE.**

US Rail seeks to acquire quick, "after the fact" approval of the Board without undergoing full regulatory scrutiny, including any review of the effects of the proposal on the environment and local community. See US Rail's initial Notice of Exemption application (asserting that the proposed transaction is exempt from environmental review). Because of the significant questions concerning the status of the proposed facility and the track as well as its environmental impact, US Rail's proposal is not appropriate for the summary notice of exemption and should instead be subject to close review through the normal application process.

49 U.S.C. § 10901 provides that a person must obtain authorization from the Board in order to construct and operate a rail line. Approval is only proper after the Board weighs the public interest. 49 U.S.C. § 10901, Jefferson Terminal Railroad Co. - Acq. and Oper. Exemption (Crown Enterprises, Inc., STB FD No. 33950, Slip Op. at 4 (served March 19, 2001) ("Jefferson Terminal")). Under 49 C.F.R. § 1150.31, exemption from this full review may be appropriate through a Notice of Exemption proceeding allowing "after the fact" Board review (if

objections are received) See Riverview Trenton Railroad Company-Acq and Oper Exemption-Crown Enterprises, Inc., STB FD No 33980, Slip Op at 7 (served February 15, 2002) ("Riverview Trenton") This exemption procedure is generally intended for transactions that are "so routine" and in order to facilitate the continuity of rail service Jefferson Terminal, Slip Op at 4, see also Class Exemption-Acq & Oper Of R Lines Under 49 U S C 10901, 1 I C C 2d 810 (1985) (the class exemption procedures were "adopted to serve shippers and community interests by facilitating continued rail service, on lines that the selling carrier could no longer operate profitably, by new, smaller carriers seeking to provide service more efficiently") These class exemption procedures are thus "designed to meet the need for expeditious handling of a large number of requests that are rarely opposed " Riverview Trenton, Slip Op at 6 (citing Class Exemption, 1 I C C 2d at 811)

Applicants are not entitled to misuse the exemption process by using it as a "device to acquire or retain property for non-rail purposes using federal preemption as a shield " Jefferson Terminal, Slip Op at 4 Moreover, full review by the Board, rather than the Notice of Exemption proceeding, is appropriate with matters that "attract substantial controversy and opposition, including opposition from public agencies" and where the transaction is to convert private carrier operations into common carrier service See Riverview Trenton, Slip Op at 6-10, see also Jefferson Terminal, Slip Op at 4-5

Here, there are several reasons why the Notice of Exemption procedure is inappropriate First, the City of Paterson has submitted evidence demonstrating that the subject property has not previously had track on it or been used for rail service since the 1960s, that is, for forty years Therefore, US Rail seeks to convert inactive, non-rail property into common carrier rail service--

not to facilitate the continuation of rail service. The construction of new track has been required and such construction has so far escaped Board review. Despite the gloss applied by US Rail's submission, this is not private track that is suddenly being converted to any common carrier purpose, to the contrary, it appears likely that this is all one single scheme devised to circumvent both state and STB oversight.

Second, significant questions and objections surround this application, notably (1) the effect of the current condemnation proceeding on the owner of the property, (2) the nature of the waste activities to be handled at the facility, (3) the nature of the relationship between US Rail and Shannon G especially in view of the lease and their respective roles and obligations with respect to the proposed operation, and (4) whether Shannon G, a non-rail entity, has in fact constructed "private track" that is outside the Board's jurisdiction. The Board previously stated in Jefferson Terminal

Here, there is ample basis to question whether what Jefferson acquired was a rail line. The City states, and Jefferson does not deny, that rail service has not been provided over this track for 13 years. It may be, as Jefferson claims, that this track was a rail line that could not be removed without regulatory permission, and that a common carrier obligation thus remains attached to the property and would devolve upon Jefferson if it were allowed to become a rail carrier. But it may well be instead that this was ancillary trackage that was properly taken out of service without any need for regulatory permission, as to which the common carrier obligation was thus extinguished long ago. These are substantial factual and legal issues, and under the particular circumstances presented here, we will revoke the exemption, so that any further proceedings (should Jefferson choose to pursue its proposal) would be handled under a more searching process—either through a petition for an individual exemption under 49 CFR 1121, or a full application under 49 CFR 1150—designed to elicit a more complete record [Slip Op. at 4].

As in Jefferson Terminal, the important questions that have arisen with respect to US Rail's application demonstrate that the Notice of Exemption proceeding is not proper here.

Third, US Rail argues that it is entitled to provide common carrier service over private track, and that the construction of this private track is outside the Board's review. By doing so, US Rail and Shannon G are attempting to convert private property into rail property for the sole purpose of evading essential oversight of their plans. In support of its claim that Shannon G has merely built private track, US Rail vaguely and unclearly argues that "[Shannon G] was in the process of building the track that US Rail proposes to operate," but fails to demonstrate that this was a bona fide endeavor by a bona fide shipper in support of an ongoing commercial enterprise. And, as noted above, the lease between the parties raises questions as to the legitimacy of Shannon G's claim to be a private shipper.

Moreover, if the Notice of Exemption contains false and misleading information, it is void from the start. The City of Paterson's Opposition filing contains ample factual evidence showing that the Notice of Exemption contains false and misleading information. In addition, NJDEP strongly suspects that US Rail's assertion that waste will not be handled is also false. As explained more fully below, NJDEP is concerned that US Rail is simply using the Notice of Exemption proceeding to handle waste at an unregulated solid waste facility in order to avoid state environmental, health and safety regulation by misuse of federal preemption. US Rail has also not presented any reasoned justification to support its claim that full environmental review and scrutiny by the STB is not warranted.

For all of these reasons, the Board should reject US Rail's Notice of Exemption and, assuming US Rail wishes to proceed, subject its application to full review in order to determine whether the proposed operation is in the public interest. See also Riverview Trenton, Slip Op. at 7 ("A change in the status of the line from private to common carrier service, the effect of such a

change on the local community, and the concerns expressed by the local community about that effect require our closer scrutiny of the proposal prior to the issuance of the authorization that is sought")

## **II. THE EVIDENCE SUGGESTS THAT THE OPERATION IS DESIGNED SOLELY TO MISUSE ICCTA'S PREEMPTION PROVISION.**

In addition to the two verified statements submitted by the City of Paterson, additional publicly available information concerning US Rail causes NJDEP to believe that, despite US Rail's assertions to the contrary, waste will be handled at the subject Paterson facility. This calls into question the veracity of US Rail's Notice of Exemption.

First, US Rail currently handles municipal solid waste at all of its other facilities, including on its Jackson line with which the Paterson line will connect. See [www.usrailcorp.com](http://www.usrailcorp.com)

Second, in New England Transrail, LLC D/B/A Wilmington and Woburn Railway-Petition for Exemption from 49 USC 10901 to Acquire, Construct and Operate as a Rail Carrier on Tracks and Land in Wilmington and Woburn, Massachusetts, STB FD No 34797, counsel for US Rail described US Rail as "a Class III short line railroad with operations in Ohio [that] generates a large part of its revenue from hauling solid waste materials." See Attachment E.

Finally, NJDEP's experience has demonstrated that many non-rail entity solid waste operators align themselves with rail carriers in order to evade state and local regulation under the guise of federal preemption. These same entities also use the Notice of Exemption proceeding to attempt to gain rail carrier status quickly. See, e.g., Ashland Railroad, Inc --Lease and Oper Exemption--Rail Line in Monmouth County, New Jersey, STB FD Nos 34986 & 34987 (served



April 30, 2007) (The STB stayed the application based on NJDEP's concerns that the entity did not provide sufficient information demonstrating that it was entitled to the class exemption proceeding or concerning its proposed operations) Based on the two verified statements submitted by the City of Paterson, US Rail's current handling of municipal solid waste at all of its other facilities, and US Rail's own statement that a large part of its revenue is derived from moving solid waste, NJDEP has ample reason to be concerned that US Rail's Notice of Exemption contains false and/or misleading information, and that the proposed operation is intended to escape legitimate oversight that is essential to protect the public health, safety and environment.<sup>2</sup> The STB should not permit its summary Notice of Exemption procedures to be misused in this way

### **CONCLUSION**

Based on the foregoing, NJDEP believes that US Rail's Notice of Exemption contains false and/or misleading information and thus should be rejected In the event US Rail wishes to proceed, its application—and the construction of rail track—should be subject to full scrutiny by the Board In addition, NJDEP respectfully requests that the Board permit the parties to engage in discovery so that NJDEP may explore the various assertions of US Rail and Shannon G Only in that way will the record properly demonstrate whether these parties are engaged in a bona fide

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<sup>2</sup> NJDEP notes that counsel representing Shannon G, see Exhibit No 28a of the City of Paterson's opposition submission, has been involved, as owner of and attorney for various solid waste entities, in two recent, successive attempts to construct and operate a rail-side solid waste facility without state oversight due to a claim of federal preemption Both attempts, moreover, were in environmentally sensitive locations first, in the Pinelands National Reserve, and when that attempt was enjoined by the federal district court as not constituting transportation by rail carrier, see JP Rail v New Jersey Pinelands Comm'n, 404 F Supp 2d 636 (D N J 2005), a second attempt was made within New Jersey's coastal zone, see NJDEP v JP Rail, No ATL-C-41-06 (Sup Ct filed May 8, 2006), which was preliminary enjoined by the state court

common carrier operation or whether. Instead, they have developed a new type of artifice to misuse the Section 10501(b) preemption in order to evade essential state and federal regulation of solid waste operations

Respectfully submitted,

Dated

*Aug. 10, 2007*

*Kevin P Auerbacher /PK*  
Kevin P Auerbacher  
Deputy Attorney General  
609-292-6945  
Attorney for New Jersey Department of  
Environmental Protection

**CERTIFICATE OF SERVICE**

I certify that I have this day, August 10, 2007, served copies of the Petition for Leave to Intervene in this proceeding (FD No. 35042) by the New Jersey Department of Environmental Protection upon John D. Heffner, Esq., attorney for applicant, U.S. Rail Corporation via electronic mail at j.heffner@verizon.net, Ben-David Seligman, Esq., attorney for City of Paterson, via electronic mail at bseligman@patcity.com, and G. Paul Moates, Esq., attorney for New York Susquehanna and Western Railway Corporation via electronic mail at gmoates@sidley.com.

  
Michele D. McGahey

## **RAILROAD OPERATING AGREEMENT AND PROPERTY LEASE**

THIS AGREEMENT is made by and between: SHANNON G., a New Jersey limited liability corporation, whose address is 737 Broad Street, Clifton, New Jersey 07013, hereinafter "LESSOR", and by U S RAIL Corporation, whose address is 7846 W. Central Avenue, Toledo, Ohio 43617, hereinafter "LESSEE", and collectively the "PARTIES"

THE PARTIES AGREE AS FOLLOWS:

### **1. LEASED ASSETS.**

Lessor hereby leases to Lessee, upon the terms and conditions of this Agreement, all of the assets and properties located at 247-265 Fulton Place, Paterson, New Jersey, more fully described on the attached Exhibit # 1. (the "Leased Assets"), for the purpose of operating a common carrier railroad and transload facility, including but not limited to the following assets:

- (a) A line of railroad, consisting of approximately 1,400 feet, to be built by the Lessor, and constructed to the design and satisfaction of Lessee.
- (b) All side tracks, yard tracks, branch lines, turn outs, switch's and connecting track, related or connected property, or any other property associated with or connect to the running, operating or servicing of customers of the railroad, and all road ways or other property used, connected or related to the operation of the railroad, including all buildings of every type and description.

**U S RAIL**  
**FILE COPY**

- (c) All inventories, fuel, supplies, uninstalled track and rail and other materials related to or acquired or used for locomotive, car, trailer, containers, machinery, equipment, trackage, track, signal, structure and building maintenance or repair, or otherwise owned by the Lessor or used in connection with the operation or use of said leased assets.
- (d) All transferable governmental permits, consents, approvals and licenses owned or used by Lessor, if any, in connection with the Leased Assets.
- (h) All interchange agreements, joint facility agreements, trackage agreements and trackage and operating agreements, rights of way, or similar agreements related to the operation or use of the Leased Assets;
- (i) All rights, benefits and privileges of the Lessor in connection with the Leased Assets in its capacity as grantor, licensors, lessor or franchiser, or in any similar capacity, arising out of or under any contract, easement, franchise, right-of-way, license or lease relating to the Leased Assets;
- (j) All contracts between the use of and the Leased Assets and any receiver or shipper for the movement of traffic, and any contracts with participating transportation companies pertaining to the movement of traffic.
- (k) All agreements for industrial switching, track and rail car maintenance, construction and repair, and all other customer contracts and agreements.
- (l) All leases, easements, licenses, rights-of-way or other interests in real property owned, leased, used, held for use or otherwise held by the railroad in connection with the operation, use or enjoyment of the Leased Assets; and

- (m) All contracts in connection with the operation, use or enjoyment of the Railroad (including, without limitation, public and private grade crossing agreements, and pipeline, wireline, fiber optic and other utility service agreements) if any.

**2. LESSEE'S RIGHTS.**

- (a) Effective on the date of execution of this Agreement, Lessee will have all rights, free from restrictions, interference or hindrance from the Lessor, its agents, affiliates, employees, or any entity connected to any of them, to:
- (i) To fully and completely use all Leased Assets for any lawful purpose;
  - (ii) To operate the Leased Assets as a railroad, or other legitimate business connected with the operation of a common carrier railroad,
  - (iii) to receive and demand payment for rail services to customers; and
  - (iv) To receive and demand payment for easements, leases, rentals or repair services.
- (b) At any time during the term of the Lease, Lessee may enter into an agreement with an affiliated business entity that will handle the actual day-to-day operation of the Leased Assets as a common carrier railroad.

### **3. TERM AND RENTAL PAYMENTS.**

- (a) Term: The term of this Agreement shall be Thirty (30) years, beginning October 1, 2006. Thereafter, this Agreement will automatically renew for additional periods of ten (10) years each, unless Lessee gives written notice of its intention to terminate the Agreement to the Lessor at least one (1) year prior to the expiration of the Agreement.
- (b) Base Rent: Lessee will pay annual rent in the amount of one hundred thousand dollars (\$100,000) per year during the term of this Agreement, including any renewal periods.
- (c) Additional Rental: In addition, beginning with its first fiscal year commencing on or after December 31, 2011, Lessee shall pay Lessor an additional annual rent payment equal to fifty dollars (\$50.00) for each rail car that Lessee receives payment for that is transported over any track on the Leased Assets.

### **4. INDUCEMENT TO LESSEE.**

In order to induce Lessee to enter in to this Agreement, Lessor agrees to pay Lessee upon execution of this Agreement, the sum of Twenty Thousand Dollars (\$20,000.00). Lessee agrees that it will treat this payment by Lessor for services provided by Lessee to Lessor, and credited to Lessor for engineering services provided to Lessor in connection with the construction of the track on the Leased Assets.

**5. OWNERSHIP AND USE.**

- (a) The Leased Assets shall be the exclusive property of Lessor, except for Lessee's rights to use them in normal business operations under this Lease.
- (b) Lessee shall keep all Leased Assets at all times free and clear from all liens and encumbrances unless agreed to by Lessor. Lessee shall give Lessor immediate notice of any such attachment or other judicial process affecting any of the Leased Assets.
- (c) Lessee shall use the Leased Assets in a careful and proper manner and shall comply with all federal laws. Lessee shall not make any alterations to the Leased Assets that shall decrease the value of said Leased Assets without Lessor's prior written consent.
- (d) Lessee may not sublease any of the Leased Assets without Lessor's written consent.

**6. NOTICES.**

Lessee, at its own cost and expense, will be responsible for preparing and filing all notices with respect to this Lease that are required by the United States Surface Transportation Board, the Federal Railroad Administration, and any other federal government agency or administrative body having jurisdiction over the operation of the Leased Assets by Lessee or its assignee



**7. REPAIRS AND REPLACEMENTS.**

Lessee shall keep the Leased Assets in good condition and, at Lessee's own cost and expense, make all repairs and replacements where necessary. All such replacements shall immediately become the property of Lessor.

**8. INSURANCE.**

Lessee, at Lessee's own cost and expense, shall insure the Leased Assets against casualty, fire, and vandalism in the amount of \$2 million, and obtain public liability insurance with minimum limits of \$1 million per person / \$5 million per incident for bodily injury and \$1 million for property damage, all in the form and with the insurance companies that shall be satisfactory to Lessor. All insurance policies shall name both Lessee and Lessor as insured, and copies of the policies and the receipts for the payment of premiums shall be furnished to Lessor. Each liability policy shall provide that all losses be paid on behalf of Lessee and Lessor as their respective interests appear. Each insurance company shall agree that it will give Lessor 30 day's prior written notice of any alteration or cancellation of any policy.

**9. TAXES.**

Lessee shall pay when due all taxes imposed with respect to the Leased Assets during the term of the Lease.

**10. INDEMNITY.**

Lessee assumes liability for and shall indemnify Lessor from all losses, damages, claims, suits, costs, expenses, and disbursements, including legal expenses, incurred by Lessor in

any way relating to the use of the Leased Assets. The indemnities contained in this section shall continue even after the termination of this Lease if arising under the term of this Agreement.

**11. INSPECTION.**

Agents of or the Lessor may at a reasonable time enter Lessee's premises to inspect the Leased Assets and the manner in which it is being used.

**12. REPRESENTATIONS AND WARRANTIES OF LESSOR.**

Lessor represents and warrants the following to be true:

- (a) Status of Lessor LESSOR is a limited liability corporation duly organized, validly existing, and in good standing under the laws of that State; and, further, is properly authorized, according to its Operating Agreement, and duly adopted Resolution, to enter into and carry out the transactions contemplated by this Agreement.
- (b) Authority. When executed, this Agreement will be a legal, valid, and binding obligation of Lessor.
- (c) Absence of Undisclosed Liabilities. Lessor does not know or have reasonable grounds to know of any basis for the assertion against Lessor, of any claim that, if presented, would impair Lessor's ability to enter into this Lease, or impair Lessee's ability to use the Leased Assets or operate a railroad.
- (d) Title to Properties. Lessor has good and marketable title to all of the Leased Assets, subject to no mortgage, pledge, lien, encumbrance, security interest, or charge. Further, except as set forth in this Agreement, there are no

- (p) No Violation or Breach The performance of this Agreement will not be in violation of any laws, statutes, local ordinances, state or federal regulations, court or administrative order, or ruling, nor is the performance of this Agreement in violation of any loan document's conditions or restrictions in effect for financing, whether secured or unsecured.
- (q) Reliance. The foregoing representations and warranties are made by the Lessor with the knowledge and expectation that Lessee is placing complete reliance on them.

**14. REPRESENTATIONS AND WARRANTIES OF LESSEE.**

Lessee represents and warrants the following to be true:

- (a) Status of Purchaser. Lessee is an Ohio Limited Liability Corporation duly organized, validly existing, and in good standing under the laws of that State; and, further, is properly authorized, according to its Articles or Bylaws and by a duly adopted Resolution, to enter into and carry out the transactions contemplated by this Agreement.
- (b) Authority. This Lease Agreement when executed will be a legal, valid, and binding obligation of Lessee.
- (c) Awareness of Lessee. Lessee acknowledges the following:
  - (i) Lessee has had an opportunity to examine the Leased Assets and agrees to accept the same "As Is," subject to the remaining conditions and other provisions of this Agreement.
  - (ii) Lessee has, either individually or through its agents or employees, sufficient knowledge, expertise, and

financial capacity, Lessee is capable of evaluating the merits and risks of leasing the Leased Assets pursuant to this Agreement

- (d) Litigation. There are no actions, suits, or proceedings pending or, to Lessee's knowledge, threatened or likely to be asserted, against the Lessee, before any court, administrative agency, or other body that would impair Lessee's ability to enter into this Lease or to operate the Leased Assets as a railroad as contemplated; and no judgment, order, writ, injunction, decree, or other similar command of any court or governmental agency has been entered against or served upon Lessee relating to this Agreement and/or the transactions contemplated by this Agreement.
- (e) Broker's or Finder's Fees. No agent, broker, investment banker, person, or firm acting on behalf of Lessee is or will be entitled to any broker's or finder's fees or any other commission or similar fee directly or indirectly from either of the Parties in connection with this Lease Agreement.

#### **15. LIABILITY FOR DAMAGE.**

Lessee shall be responsible for any damage to the Leased Assets during the term of this lease and shall pay to Lessor the value of as much of the Leased Assets as may be damaged or destroyed. On receipt of the payment, Lessor shall, to the extent of the amount paid, assign to Lessee any rights Lessor may have with respect to the damaged or destroyed Leased Assets under any insurance.

**16. BREACH.**

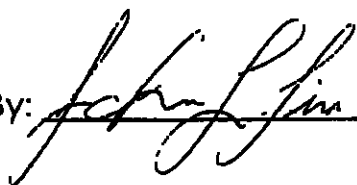
Upon a breach of any other condition of this Lease, or Lessee discontinues business, Lessor shall have the right to terminate this Agreement, upon giving sixty (60) days advanced written notice to Lessee, specifying the breach on which such termination is based. Lessee shall have adequate time, but not less than 60 calendar days from the date of such notice to cure the breach specified by Lessor. In the event this Agreement is terminated for failure to cure the breach, Lessor shall have the right to pursue any remedies available to Lessee as are permitted by law.

**17. GENERAL.**

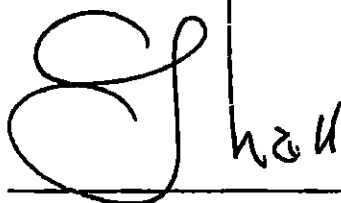
- (a) Lessee may not assign or transfer (by operation of law or otherwise) any of its rights or obligations under this Agreement, except to an affiliate of Lessee.
- (b) Lessor may assign this Agreement without Lessee's consent.
- (c) This Agreement contains the entire agreement between the Parties, cannot be modified except in writing and signed by Lessor and Lessee, and shall be binding upon the parties and their legal representatives, heirs, successors, and assigns.
- (d) This Agreement can be specifically enforced.
- (e) The interpretation and enforcement of this Lease shall be governed by New Jersey law.
- (f) This Agreement may be executed in counterparts, with each counterpart constituting one and the same instrument.

This Agreement is executed at Toledo, Ohio on the dates set forth below, and the parties intend it to be effective as of the commencement of the Lease term specified in §3(a).

**SHANNON G., Lessor**

By:  Date 8-10-06

**U S RAIL Corporation, Lessee**

By:  Date 8-10-06

**U S RAIL**





JON S. CORZANI  
*Governor*

*State of New Jersey*  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
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25 MARKET STREET  
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August 6, 2007

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John D. Heffner, PLLC  
1920 N Street, N.W.  
Suite 800  
Washington, DC 20423

Re STB Finance Docket No. 35042, U S Rail Corporation -  
Verified Notice of Exemption - Shannon G, a New Jersey  
limited liability company

Dear Mr. Heffner:

This letter responds, in part, to your July 13, 2007 letter. In that letter, you indicate that you will provide a copy of the lease agreement entered into between U S Rail and Shannon G "upon execution of a confidentiality agreement." However, you provide no explanation as to why such a lease agreement is not public information. If there is confidential, proprietary information contained within the lease agreement, we are willing to accept a copy of the lease agreement that includes redacted price terms. Accordingly, please furnish this agreement forthwith.

Sincerely yours,

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY

By \_\_\_\_\_  
Ruth E. Carter  
Deputy Attorney General





# **EXHIBIT C**



JON S. CORZINE  
*Governor*

*State of New Jersey*  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
25 MARKET STREET  
PO Box 093  
TRENTON NJ 08625 0093

STUART RABNER  
*Attorney General*

ROBERT J. GILSON  
*Director*

June 12, 2007

John D. Heffner, Esq.  
John D. Heffner, PLLC  
1920 N Street, N.W.  
Suite 800  
Washington, DC 20423

Re STB Finance Docket No. 35042, U.S. Rail Corporation -  
Verified Notice of Exemption - Shannon G., a New Jersey  
limited liability company

Dear Mr. Heffner:

We are in receipt of the Notice of Exemption that you filed with the Surface Transportation Board ("STB") with respect to the above referenced Finance Docket Number. On behalf of the Attorney General of the State of New Jersey, the New Jersey Department of Environmental Protection ("NJDEP"), and other state agencies that may be affected by these applications, we have reviewed this submission to the STB. Based on our review, we are seeking information regarding the specific nature and operations of the proposed "transload terminal" in Paterson, New Jersey that is the subject of the above referenced Notice.

Initially, please provide any operating, transportation or other agreements between and/or among U.S. Rail Corporation ("U.S. Rail"), Shannon G., a New Jersey limited liability company ("Shannon G.") and any shippers for the proposed facility. In addition, please provide answers to the following questions:

1. Although you indicate that "U.S. Rail does not intend to solicit and does not expect to handle any sort of waste traffic including construction and demolition debris," does U.S. Rail intend at any time to handle such waste materials at the proposed



facility?

- 2 Does U S Rail or Shannon G have a contract with any shipper to haul solid and/or hazardous waste? If there is no contract, has any shipper been provided with a rate quote or tariff rate?
- 3 Who are the shippers or proposed shippers for this facility? How and by whom have these shippers been solicited with respect to this facility?
- 4 What is the proposed volume of shipments and does any shipper have any minimum volume shipment obligations?
- 5 Who is supplying rail cars that will be used for moving the shipments? What type of rail cars?
- 6 To where will the shipments go from the proposed facility, including the ultimate destination?
- 7 From what source(s) is the shipment originating?
- 8 Has there been any communication with NJDEP or any other New Jersey agency concerning the proposed facility? Do U S Rail or Shannon G intend to communicate with such agencies and/or seek approval for the proposed facility?
- 9 Do U S Rail or Shannon G intend to comply with New Jersey regulations for the proposed facility? Who will be responsible for obtaining any environmental permits?
- 10 Will U S Rail or Shannon G issue the bills of lading for the shipments?
- 11 Have U S Rail or Shannon G made any arrangements with trucking companies that will be bringing the shipments into the facility? Which trucking companies? Has NJDEP permitted these trucking companies or will these companies be permitted? Will these trucking companies issue bills of lading? Have U S Rail or Shannon G entered into any agreements with such trucking companies or will they?
- 12 Will any of the shippers act as an agent or contractor for U S Rail or Shannon G?
- 13 Will any of the shippers provide funding for the proposed facility?
- 14 Will any of the shippers reimburse U S Rail or Shannon G for any costs associated with the proposed facility?

June 12, 2007

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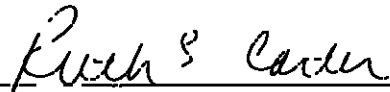
15 Are there any contracts with landfills in Ohio?

15 Have a traffic study and environmental impact study been completed?

I thank you in advance for your cooperation in providing the information that is necessary to understand the nature of the proposed operations here. I am available to discuss these items further.

Sincerely yours,

STUART RABNER  
ATTORNEY GENERAL OF NEW JERSEY

By   
Ruth E. Carter  
Deputy Attorney General

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July 13, 2007

State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
25 Market Street  
P.O. Box 093  
Trenton, NJ 08625-0093  
Attn: Ruth F. Carter, Esq.

**RE: STB Finance Docket No. 35042, U S Rail Corporation –  
Verified Notice of Exemption – Shannon G., a New  
Jersey limited liability company**

Dear Ms. Carter

I am writing in response to your letter dated June 12, 2007, in connection with the above-captioned proceeding now pending at the federal Surface Transportation Board ("STB"). Your letter states that you have reviewed U S Rail Corporation's ("U S Rail's") STB filing and that you are seeking information regarding the specific nature and operations of the proposed "transload terminal" in Paterson, NJ, that is the subject of the above-captioned Notice. This letter follows up the telephone conversation we had in connection with this matter shortly before the July 4<sup>th</sup> Holiday during which I proposed to send you my response upon my return to the office.

Your letter requests that U S Rail provide any operating, transportation, or other agreements between and/or among U S Rail, Shannon G., and any shippers for the proposed facility. Additionally, you request answers to some fifteen questions posed in the body to this letter.

Upon execution of a confidentiality agreement, I will provide you with a copy of the lease agreement entered into between U S Rail and Shannon G. You may prepare and furnish an agreement for my client's signature or I can prepare one. At present there are no other agreements between U S Rail and Shannon G., or between U S Rail and any customers of U S Rail. I am not privy to any agreements between Shannon G. and its customers. You will have to contact them directly.

For the sake of brevity, I will identify each question by question number and then will provide U S Rail's response

1. U S Rail does not intend at this time to handle any sort of waste traffic
2. As to U S Rail the answers are "no" and "no." I cannot answer for Shannon G
3. U S Rail is willing to identify any shippers or proposed shippers upon presentation and signature by both parties of a confidentiality agreement
4. Unknown at this time but U S Rail estimates 1900-2400 car loads annually. There will be no minimum volume commitments
5. Rail cars will be supplied by various connecting railroads and those customers who have their own car fleets. Car types will include gondolas, box cars, flat cars, covered hoppers, and open top hoppers.
6. The facility will receive cars from, among other origins, Jackson, OH, Birmingham, AL, Chicago, IL, points in Upstate New York, and several points in Pennsylvania and California. U S Rail will ship outbound loads to any destination sought by a shipper
7. Unknown as yet
8. Yes, I received a phone call from NIDEP Washington STB counsel Edward Greenburg, Esq., inquiring as to the traffic. I advised Mr Greenburg that U S Rail will not be shipping or receiving waste at this time because it does not anticipate soliciting or handling waste traffic
9. U S Rail will comply fully with any laws applicable to its operation and will cooperate fully with any agency having jurisdiction over its proposed operation. U S Rail has no corporate or other relationship with Shannon G other than as tenant and landlord. Any questions concerning Shannon G should be directed to them. U S Rail will obtain any required environmental permits, however, it believes that its status as a federally regulated railroad may preempt any state or local requirements. Nevertheless, U S Rail will attempt to work with state and local authorities towards a cooperation resolution of any concerns
10. U S Rail will issue bills of lading if requested by its customer. It has been U S Rail's experience that most experienced shippers prepare their own bills of lading
11. No. U S Rail cannot speak for Shannon G
12. No. U S Rail cannot speak for Shannon G
13. No
14. No. Shannon G is constructing this facility at its own expense
15. No
16. Your second question #15. No

I hope this letter answers your inquiry. Please call me if I can be of further assistance.

**BERRY • MOORMAN**

January 25, 2006

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Our research indicates that solid waste in Northeast region of the United States is that region's major outbound component for export. Because of the high volumes and dense bulk, loads of solid waste are ideally suited for rail transportation. In order to attract this commodity, railroads must be able to locate suitable transloading facilities (meeting the appropriate local health and safety requirements) in order to interface with local customers. Without transloading facilities such as the one proposed in this petition, the entire system will suffer because this rail traffic will not be generated for long-haul carriers or other short lines at the destination end.

In passing the Interstate Commerce Commission Termination Act of 1995, Congress did not distinguish between waste and other commodities when defining transportation activities to include the lifting, storage and handling of materials despite efforts by some members of Congress to do so. The Board should not draw that distinction either.

Rail transportation of solid waste has considerable environmental, social and fiscal benefits over long-haul trucking of this commodity to distant landfills, including: (i) reduced air emissions, (ii) improved highway safety and reduced road congestion; and (iii) decreased damage to roadway caused by over-the-road long haul trucking.

In addition to pointing out some of the benefits generated by the New England Transrail project, we also caution that, should projects such as the this transloading facility be inordinately delayed, or otherwise bogged down in "red tape", it is likely that capital sources will be discouraged from investing in the rail industry. The damage from such a loss of access to capital for operations and expansion of the railroad industry (particularly Class III railroads) is incalculable.

For this and the other foregoing reasons, we urge you to expeditiously approve the above captioned application without delay. Please do not let competing interests or parochial local concerns cloud the issues and abuse your administrative process; but rather allow the Board to continue to develop and improve a nationally integrated rail system.

Thank you for your consideration.

Sincerely,

**BERRY • MOORMAN**



Thomas E. Dew

TED/cle

cc US Rail Corporation